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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,546	06/18/2001	Paul Donato	20004/42-US	1399
81905 7590 04/17/2009 Hanley, Flight & Zimmerman, LLC 150 S. Wacker Dr. Suite 2100 Chicago, IL 60606				
EXAMINER				
SHANG, ANNAN Q				
ART UNIT		PAPER NUMBER		
2424				
MAIL DATE		DELIVERY MODE		
04/17/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/883,546	<b>Applicant(s)</b> DONATO, PAUL
<b>Examiner</b> ANNAN Q. SHANG	<b>Art Unit</b> 2424

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

/Annan Q Shang/  
Primary Examiner, Art Unit 2424

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments with respect to the rejection of the last office action have been considered but are not persuasive.

Applicant discusses the prior arts of record and the claimed invention and further argues that the prior arts of record do not teach the the claims limitations (see page labeled 24 of 34+ of Applicant's Remarks).

In response, Examiner disagrees. Examiner notes Applicant's arguments however, Examiner treated all the claims limitations accordingly. The claim limitations of claims 194-212 were properly treated and incorporate in the claim limitations of claims 182-183. Williams does not determine a single user using the system as argued by Applicant. Williams teaches monitoring and storing behavior log of users, which includes tuning (selecting, changing, switching, flipping or surfing of channels or station) during time periods of each day (different time intervals within 24 hours, week(s), month(s), etc.), compares and matches each user behavior log during the time periods of each day to provide channels/programs to the user including suggesting channels/programs to the user during this time interval, time of the day, day of the week or day of the month (col.5, lines 8-36, line 60-col.6, line 7, lines 46-60, col.7, 63-col.8, line 42, line 64-col.9, line 63, col.12, lines 5-14, col.13, line 55-col.14, line 24 and col.15, lines 3-40). Williams further, performs various action for users not currently viewing an in-progress program including adding audience members to programs of interest (e.g., recording programs for users not currently viewing an in-progress program) without prompting the audience member, etc, and notifying the audience member(s) accordingly. Williams does not clearly teach determining a count of audience members of a program being viewed at a first location and other locations and adding the audience member to a log of audience members to the program being viewed within time a predetermined time (part of day, week, month, etc.) intervals at the same time. However, in the same field of endeavor, Maissel discloses a television network, which monitors audience members, viewing a program or before viewing of the program, at various locations, by requesting viewers to enter their personal identification information (PIN) (figs.1-8, [0045], [0171], [0221], [0231] and [0244-0249]). Maissel, processing of users information is done within predetermined time intervals (part of day, week, month, etc.) and provides real-time alerts to audience members as to the number of audience viewing a particular program(s) at a particular time period(s). Hence, Applicant's arguments are not persuasive. The rejection of the last office action is proper meets all the claims limitations. The finality of the last office action is hereby maintained.